Hong Leong Bank Bhd (previously known as Credit Corp (M) Bhd) v Sheikh Ahmad Marzuki bin Sheikh Yusof

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO T-03(IM)-180–10 OF 2013
MOHAMAD ARIFF, MAH WENG KWAI AND UMI KALTHUM JJCA
13 OCTOBER 2014

Banking — Banks and banking business — Guarantee — Failure to repay loan facilities — Recovery action by bank — Bank obtained summary judgment and issued bankruptcy notice — Filing of creditor's petition — Bank obtained adjudication and receiving order against guarantor — Application to rescind orders — Whether guarantor had locus standi to apply to reverse decision of Director General of Insolvency to admit proof of debt — Whether guarantor's act to annul and rescind AO/RO was prevented by principle of res judicata — Whether recovery of debt under conventional loan was time barred — Whether requirements under s 105(1) of the Bankruptcy Act 1967 fulfilled

The appellant granted two loan facilities to Rangkaian Beringin Sdn Bhd ('the borrower'), namely an Islamic and a conventional loan, which were both guaranteed by the respondent. Upon default in the repayment of the loans, the appellant filed recovery action against the respondent and on 15 June 1999, obtained summary judgment for the sum of RM709,999.59. As the respondent failed to pay the judgment sum, the appellant on 31 May 2011 issued a bankruptcy notice to the respondent. Upon the respondent committing an act of bankruptcy, the respondent proceeded to file the creditor's petition. On 20 December 2011, the appellant obtained the adjudication order and receiving order ('the AO/RO') against the respondent. Vide encl 12A, the respondent filed a summons in chambers in the High Court to rescind the AO/RO on the ground that the loans had been fully settled. Ten days later on 19 January 2012, the appellant filed its proof of debt for RM1,075,665.72, being the sum of RM141,606.98 owing under the Islamic loan and the sum of RM934,058.74 owing under the conventional loan. The respondent's application in encl 12A was dismissed by the registrar on 26 January 2012. On 2 February 2012, the respondent appealed to judge in chambers against the registrar's decision. The judge ordered the Director General of Insolvency ('DGI') to confirm the total sum owing by the estate of the respondent. The DGI rejected the sum of RM323,479.55 from the appellant's proof of debt and only admitted the sum of RM141,606.98 under the Islamic loan and the sum of RM610,579.19 under the conventional loan thereby totalling RM752,186.17. However, vide encl 22A, the respondent applied again to the High Court for an order to annul and rescind the AO/RO made exactly a year earlier and to expunge the admission of the proof of debt

under the conventional loan by the DGI. The respondent's application was dismissed. On appeal to the judge in chambers, the appeal was allowed and the order of the registrar was reversed. Being dissatisfied with the decision of the judge, the appellant appealed and argued that the respondent had no locus standi to apply to reverse the decision of the DGI to admit the proof of debt under the conventional loan in the sum of RM610,579.19; that the application of the respondent to annul and rescind the AO/RO was prevented by the principle of res judicata; that the recovery of the debt under the conventional loan was not time barred; and the requirements under s 105(1) of the Bankruptcy Act 1967 ('the Act') was not fulfilled by the respondent.

Held, allowing the appeal:

(1) At the material time when the DGI admitted the proof of debt there was no evidence of any scheme or composition being contemplated or in place as confirmed by the counsel for the DGI at the hearing of this appeal. It was only in the case of a composition or scheme that a debtor could make an application to the court to expunge or reduce a proof filed by a creditor. Significantly, there was no allegation whatsoever of any element of fraud being perpetrated on or by the DGI when the proof of debt was admitted (see para 20(h)).

(2) It was erroneous on the part of the respondent to invoke the provisions of s 86 of the Act in the application in encl 22A, as the applicable section was s 42 of the Act which deals with the rules as to proof of debts. Section 42 is to be read with Schedule C with respect to the mode of proving debts, the right of proof by secured and other creditors, the admission and rejection of proofs and other matters. The judge erred in law by not holding that the respondent did not have the locus to move the court to expunge the admission of the proof of debt by the DGI (see paras 20(i) & (j)).

(3) As the respondent had previously filed the summons in chambers (encl 12A) to rescind the AO/RO on the ground that the loan had been fully settled and as the respondent had decided to withdraw his appeal, the respondent by his conduct should be estopped, pursuant to the principle of res judicata, from relitigating the issues of annulment and rescission of the AO/RO and the expungement of the proof of debt admitted by the DGI under the conventional loan (see para 21(d)).

(4) Time began to run from 29 June 2006 and not from 6 October 1995, the date of the loan agreements as contended by the respondent. The six-year period from 29 June 2006 had not expired when the appellant filed the bankruptcy notice and creditor's petition and when the AO/RO were granted by the court on 20 December 2011. The six-year period had also not expired when the appellant filed its proof of debt on 19 January 2012.

Significantly, it must be noted that the respondent did not raise the issue of limitation before the AO/RO were granted by the Bankruptcy Court (see para 22(d)).

(5) What had been proved in evidence by the appellant was that the respondent had only settled the balance of the Islamic loan in the sum of RM141,606.98 but not the sum outstanding under the conventional loan. The respondent had failed to show that the conventional loan had been repaid in full to justify the annulment of the AO/RO (see para 23(b)).

[Bahasa Malaysia summary

Perayu memberikan dua pinjaman kemudahan kepada Rangkaian Beringin Sdn Bhd (peminjam), iaitu pinjaman Islam dan konvensional, yang mana keduanya dijamin oleh responden. Atas kemungkiran dalam pembayaran semula pinjaman-pinjaman, perayu memfailkan tindakan perolehan semula terhadap responden dan pada 15 Jun 1999, memperolehi penghakiman ringkas untuk jumlah sebanyak RM709,999.59. Oleh kerana responden gagal untuk membayar jumlah penghakiman, perayu pada 31 Mei 2011 mengeluarkan notis kebankrapan terhadap responden. Apabila responden melakukan tindakan kebankrapan, responden meneruskan untuk memfailkan petisyen pemiutang. Pada 20 Disember 2011, perayu memperolehi perintah pengadilan dan perintah penerimaan ('AO/RO') terhadap responden. Melalui Lampiran 12A, responden memfailkan saman dalam kamar di Mahkamah Tinggi untuk membatalkan AO/RO atas alasan bahawa pinjaman telah dijelaskan sepenuhnya. Sepuluh hari kemudian pada 19 Januari 2012, perayu memfailkan bukti hutang untuk RM1,075,665.72, iaitu sebanyak RM141,606.98 yang terhutang di bawah pinjaman Islam dan sebanyak RM934,058.74 yang terhutang di bawah pinjaman konvensional. Permohonan responden dalam Lampiran 12A telah ditolak oleh pendaftar pada 26 Januari 2012. Pada 2 Februari 2012, responden merayu kepada hakim dalam kamar terhadap keputusan pendaftar. Hakim mengarahkan supaya Ketua Pengarah Insolvensi ('KPI') untuk mengesahkan jumlah wang yang terhutang oleh harta pusaka responden. KPI menolak jumlah RM323,479.55 daripada bukti hutang perayu dan hanya menerima sebanyak RM141,606.98 di bawah pinjaman Islam dan jumlah RM610,579.19 di bawah pinjaman konvensional dengan itu berjumlah RM752,186.17. Walau bagaimanapun, melalui Lampiran 22A , responden memohon lagi kepada Mahkamah Tinggi bagi suatu perintah untuk menggugurkan dan membatalkan AO/RO dibuat tepat setahun sebelumnya dan untuk memadamkan kemasukan bukti hutang di bawah pinjaman konvensional oleh KPI. Permohonan responden telah ditolak. Atas rayuan kepada hakim dalam kamar, rayuan itu telah dibenarkan dan perintah pendaftar telah diakaskan. Oleh kerana tidak berpuas hati dengan keputusan hakim itu, perayu merayu dan berhujah bahawa responden tidak mempunyai locus standi untuk memohon untuk mengakaskan keputusan KPI

untuk menerima bukti hutang di bawah pinjaman konvensional dalam jumlah RM610,579.19; bahawa permohonan responden untuk menggugurkan dan membatalkan AO/RO dihalang oleh prinsip res judicata; bahawa pengambilan semula hutang di bawah pinjaman konvensional tidak dihalang oleh masa; dan keperluan di bawah s 105(1) Akta Kebankrapan 1967 ('Akta') tidak dipenuhi oleh responden.

Diputuskan, membenarkan rayuan:

(1) Pada masa material apabila KPI menerima bukti hutang tiada keterangan terhadap apa-apa skim atau komposisi yang dimaksudkan atau ditempatkan seperti yang ditegaskan sebagaimana yang disahkan oleh peguam bagi KPI pada pendengaran rayuan ini. Lebih penting lagi, tidak ada sebarang dakwaan unsur fraud telah dilakukan atas atau oleh KPI apabila bukti hutang dimasukkan (lihat perenggan 20(h)).

(2) Ia adalah salah di pihak responden untuk menggunakan peruntukan s 86 Akta dalam permohonan tersebut dalam Lampiran 22A, kerana seksyen yang terpakai adalah s 42 Akta yang berkaitan dengan kaedah-kaedah tentang bukti hutang. Seksyen 42 hendaklah dibaca dengan Jadual C berkenaan dengan cara hutang dibutktikan, hak bukti oleh pemiutang bercagar dan lain-lain pemiutang, pengakuan dan penolakan bukti dan perkara-perkara lain. Hakim terkhilaf dalam undang-undang dengan tidak memutuskan bahawa responden tidak mempunyai locus untuk mengarahkan mahkamah untuk memadamkan kemasukan bukti hutang oleh KPI (lihat perenggan 20(i) & (j)).

(3) Oleh kerana responden sebelum ini telah memfailkan saman dalam kamar (Lampiran 12A) untuk membatalkan AO/RO atas alasan bahawa pinjaman itu telah dibayar sepenuhnya dan memandangkan responden telah membuat keputusan untuk menarik balik rayuannya, responden dengan tindakannya harus diestop, menurut prinsip res judicata, dalam membicarakan semula isu-isu pengguguran dan pembatalan AO/RO dan pemadaman daripada bukti hutang yang diakui oleh KPI di bawah pinjaman konvensional (lihat perenggan 21(d)).

(4) Masa mula berjalan dari 29 Jun 2006 dan bukan dari 6 Oktober 1995, tarikh perjanjian pinjaman seperti dihujahkan oleh responden. Tempoh enam tahun dari 29 Jun 2006 tidak tamat apabila perayu memfailkan notis kebankrapan dan petisyen pemiutang dan apabila AO/RO telah diberikan oleh mahkamah pada 20 Disember 2011. Tempoh enam tahun itu juga tidak luput apabila perayu memfailkan bukti hutang pada 19 Januari 2012. Lebih penting lagi, ia perlu diambil perhatian bahawa responden tidak membangkitkan isu had masa sebelum AO/RO telah diberikan oleh Mahkamah Kebankrapan (lihat perenggan 22(d)).

(5) Apa yang telah dibuktikan dalam keterangan oleh perayu ialah bahawa

responden hanya telah menyelesaikan baki pinjaman Islam dalam jumlah RM141,606.98 tetapi bukan jumlah tertunggak di bawah pinjaman konvensional. Responden telah gagal untuk menunjukkan bahawa pinjaman konvensional telah dibayar balik sepenuhnya untuk mewajarkan pembatalan daripada AO/RO (lihat perenggan 23(b)).]

Notes

For cases on guarantee, see 1(2) *Mallal's Digest* (4th Ed, 2014 Reissue) paras 2551–2552.

Cases referred to

Asia Commercial Finance (M) Bhd v Kawal Teliti Sdn Bhd [1995] 3 MLJ 189; [1995] 3 CLJ 783, SC (refd)
Benoist, Re [1909] 2 KB 784, KBD (refd)
John Blade, Re (1907) 24 WN (NSW) 189 (refd)
Ng Hee Thoong & Anor v Public Bank Bhd [1995] 1 MLJ 281, CA (refd)
Superintendent of Pudu Prison & Ors v Sim Kie Chon [1986] 1 MLJ 494; [1986] 1 CLJ 548, SC (refd)
Tan Seok Leng (as the administratrix of the estate of Tan Kim Cheng, the deceased) v Magasu Sundram a/l T Magasu & Anor [2013] 10 MLJ 86, HC (distd)

Legislation referred to

Bankruptcy Act 1967 ss 42, 86, 105(1), Schedule C
Bankruptcy Rules 1969 r 186
Limitation Act 1953 ss 6, 26(2)

Appeal from: Bankruptcy No 29–315 of 2011 (High Court, Kuala Terengganu)

Lua Ai Siew (Soo Thein Ming & Nashrah) for the appellant.
Muhammad Syahri bin Adnan (Abdul Aziz bin Hassan with him) (Rafaei & Co) for the respondent.

Mah Weng Kwai JCA (delivering judgment of the court):

BRIEF FACTS/CHRONOLOGY OF EVENTS

[1] On 6 October 1995 the appellant granted two loan facilities to the borrower Rangkaian Beringin Sdn Bhd namely, an Islamic loan and a conventional loan. The respondent was the guarantor.

[2] Upon default in the repayment of the loans, the appellant filed recovery action against the respondent and on 15 June 1999 obtained summary judgment for the sum of RM709,999.59 together with interest and costs.

[3] The respondent did not appeal against the order of 15 June 1999.

[4] As the respondent failed to pay the judgment sum, the appellant on 31 May 2011 issued a bankruptcy notice to the respondent. Upon the respondent committing an act of bankruptcy, the respondent proceeded to file the creditor's petition.

[5] On 20 December 2011, the appellant obtained the adjudication order and receiving order ('the AO/RO') against the respondent.

[6] On 9 January 2012 vide encl 12A, the respondent filed a summons in chambers in the High Court to rescind the AO/RO on the ground that the loans had been fully settled.

[7] Ten days later on 19 January 2012 the appellant filed its proof of debt for RM1,075,665.72, being the sum of RM141,606.98 owing under the Islamic loan and the sum of RM934,058.74 owing under the conventional loan.

[8] The respondent's application in encl 12A was dismissed by the learned registrar on 26 January 2012.

[9] On 2 February 2012 the respondent appealed to the learned judge in chambers against the learned registrar's decision.

[10] On 6 March 2012 the learned judge ordered the Director General of Insolvency to confirm the total sum owing by the estate of the respondent.

[11] On 8 March 2012 the Director General of Insolvency rejected the sum of RM323,479.55 from the appellant's proof of debt and only admitted the sum of RM141,606.98 under the Islamic loan and the sum of RM610,579.19 under the conventional loan thereby totalling RM752,186.17.

[12] On 10 May 2012 upon the Director General of Insolvency's confirmation of the sum owing by the estate of the respondent, the respondent withdrew his appeal to the learned judge in chambers.

[13] However, on 20 December 2012 vide encl 22A, the respondent applied again to the High Court for an order to annul and rescind the AO/RO made exactly a year earlier on 20 December 2011 and to expunge the admission of the proof of debt under the conventional loan by the Director General of Insolvency made on 8 March 2012.

[14] On 26 June 2013 the respondent's application was dismissed by the learned registrar. On appeal to the learned judge in chambers, the appeal was allowed and the order of the learned registrar was reversed.

[15] Being dissatisfied with the decision of the learned judge the appellant filed its appeal on 2 October 2013.

[16] On 22 January 2014, this court unanimously decided to allow the appeal.

[17] Being dissatisfied with the said order, the respondent has filed his appeal.

THE APPEAL

[18] At the hearing of the appeal learned counsel for the appellant raised the following grounds in support of her argument namely:

(a) that the respondent had no locus standi to apply to reverse the decision of the Director General of Insolvency made on 8 March 2012 to admit the proof of debt under the conventional loan in the sum of RM610,579.19;

(b) that the application of the respondent to annul and rescind the AO/RO is prevented by the principle of res judicata in view of a previous summons in chambers filed on 9 January 2012 by the respondent to rescind the AO/RO;

(c) that the recovery of the debt under the conventional loan is not time barred; and

(d) that the requirements under s 105(1) of the Bankruptcy Act 1967 ('the Act') have not been fulfilled by the respondent.

GROUNDS OF DECISION

[19] We will now consider each of the grounds of appeal in turn.

[20] Issue 1: The locus point:

(a) it is trite that upon an AO/RO being granted by the Bankruptcy Court the affairs of the estate of the bankrupt are placed in the hands of the Director General of Insolvency and that the decisions of the Director General of Insolvency bind the bankrupt;

(b) the respondent was declared a bankrupt on 20 December 2011 and up to 8 March 2012 when the appellant's proof of debt under the

conventional loan was admitted by the Director General of Insolvency, the respondent had not been discharged as a bankrupt;

(c) hence, all matters concerning the admission of proof of debt filed by creditors are matters to be dealt with and decided by the Director General of Insolvency. Yet on 20 December 2012, the respondent sought an order of court to expunge or reject the admission of the proof of debt made by the Director General of Insolvency on 8 March 2012;

(d) rejection of a proof of debt by the Director General of Insolvency is governed by r 186 of the Bankruptcy Rules 1969 which provides as follows:

> Subject to the power of the Court to extend the time no application to reverse or vary the decision of the Official Assignee in rejecting a proof shall be entertained after the expiration of twenty-one days from the date of the decision complained of.

(e) it is interesting to note that r 186 only provides for the rejection of a proof of debt by the Director General of Insolvency but not one of admission of a proof of debt. Only the Director General of Insolvency can decide which debt is to be admitted and a bankrupt has no locus to apply to court to set aside, reverse or vary the decision of the Director General of Insolvency;

(f) even in the case of a rejection of a proof of debt it is only the creditor concerned who will have the locus to appeal to the court against the decision of the Director General of Insolvency;

(g) while it is not disputed that a bankrupt is entitled to appeal against the decision of the Director General of Insolvency under s 86 of the Act, which provides that 'if the bankrupt or any other person is aggrieved by any act or decision of the Director General of Insolvency, he may apply to the court, and the court may confirm, reverse or modify the act or decision complained of and make such order in the premises as it thinks just', a bankrupt is however not entitled to apply to expunge an admission of proof of debt by the Director General of Insolvency except in a case involving a scheme or a composition or where there is fraud, (see *Bankruptcy Law in Malaysia and Singapore, A Sourcebook of Principles, Practice Procedure, Cases and Materials*, Millennium Ed by G K Ganesan and *The Law & Practice in Bankruptcy* (19th Ed), by Williams & Muir Hunter, at para 26, p 538);

(h) in the present case at the material time when the Director General of Insolvency admitted the proof of debt there was no evidence of any scheme or composition being contemplated or in place as confirmed by learned counsel for the Director General of Insolvency at the hearing of

this appeal. It is only in the case of a composition or scheme that a debtor can make an application to the court to expunge or reduce a proof filed by a creditor. This is clear from the cases of *Re Benoist* [1909] 2 KB 784 and *Re John Blade* (1907) 24 WN (NSW) 189. And significantly there was no allegation whatsoever of any element of fraud being perpetrated on or by the Director General of Insolvency when the proof of debt was admitted;

(i) we are of the view that it was erroneous on the part of learned counsel for the respondent to invoke the provisions of s 86 of the Act in the application in encl 22A, as the applicable section is s 42 of the Act which deals with the rules as to proof of debts. Section 42 is to be read with Schedule C with respect to the mode of proving debts, the right of proof by secured and other creditors, the admission and rejection of proofs and other matters; and

(j) thus, we are of the view that the learned judge erred in law by not holding that the respondent did not have the locus to move the court to expunge the admission of the proof of debt by the Director General of Insolvency.

[21] Issue 2: The res judicata point:

(a) on 20 December 2012, the respondent applied for an order to annul and rescind the AO/RO;

(b) the respondent had previously by way of a summons in chambers (encl 12A) applied to the High Court to rescind the same;

(c) the summons in chambers (encl 12A) was filed on 9 January 2012 and upon hearing it was dismissed by the learned registrar on 26 January 2012. Being dissatisfied, the respondent appealed to the judge in chambers but on 10 May 2012, the respondent withdrew the appeal upon the Director General of Insolvency confirming the total amount of debt outstanding in the account of the estate of the respondent. By doing so the respondent had expressly and/or impliedly accepted the fact that only the sum of RM141,606.98 under the Islamic loan had been settled but not the sum of RM610,579.19 under the conventional loan, which was still owing to the appellant;

(d) we are of the view that as the respondent had previously filed the summons in chambers (encl 12A) to rescind the AO/RO on the ground that the loan had been fully settled and as the respondent had decided to withdraw his appeal, the respondent by his conduct should be estopped, pursuant to the principle of res judicata, from relitigating the issues of annulment and rescission of the AO/RO and the expungement of the proof of debt admitted by the Director General of Insolvency under the conventional loan (see *Superintendent of Pudu Prison & Ors v Sim Kie*

Chon [1986] 1 MLJ 494; [1986] 1 CLJ 548 (SC) and *Asia Commercial Finance (M) Bhd v Kawal Teliti Sdn Bhd* [1995] 3 MLJ 189; [1995] 3 CLJ 783 (SC) per Peh Swee Chin SCJ);

(e) the respondent had the opportunity to fully ventilate his case before the learned judge in chambers in the hearing of his appeal against the decision of the learned registrar in encl 12A but had instead chosen to withdraw his appeal. The same cause of action may not be relitigated between the same parties as it is res judicata. It is trite that the respondent cannot litigate by instalments; and

(f) we are of the view that the learned judge erred in law when he failed to hold that the application in encl 22A was res judicata.

[22] Issue 3: The limitation point:

(a) The respondent's case on this issue was that the appellant's cause of action in respect of the debt owing under the conventional loan arose on 6 October 1995, the date of the loan agreements, and that the appellant's claim is therefore time barred under s 6 of the Limitation Act 1953;

(b) According to the appellant the borrower had as at 20 December 2011, repaid the sum of RM349,793.99 in respect of the conventional loan, with the last payment of RM16,640.61 having been made to the appellant on 29 June 2006. A certificate of indebtedness stating the outstanding amount as at 20 December 2011 was exhibited in the affidavit in support of the appellant. The respondent as the guarantor (and director of the borrower company) was no less bound by the certificate of indebtedness, which was not in any event challenged by the respondent. The date of the last repayment was confirmed by Lee Weng Swee, manager of the appellant's Remedial Management Department in para 6 of his affidavit affirmed on 4 April 2013. The respondent did not file any affidavit in reply to rebut the averment of the appellant, (see *Ng Hee Thoong & Anor v Public Bank Bhd* [1995] 1 MLJ 281);

(c) As the borrower had made the last payment on 29 June 2006 and as the appellant had commenced bankruptcy proceedings on 31 May 2011, the appellant's action is not time barred by s 26(2) of the Limitation Act 1953, which provides that:

> Where any right of action has accrued to recover any debt or other liquidated pecuniary claim, or any claim to the personal estate of a deceased person or to any share or interest therein, and the person liable or accountable therefore acknowledges the claim or makes any payment in respect thereof, the right shall be deemed to have accrued on and not before the date of the acknowledgment or the last payment,

(d) In light of the date of acknowledgment of the last payment, time began to run from 29 June 2006 and not from 6 October 1995, the date of the loan agreements as contended by the respondent. The six-year period from 29 June 2006 had not expired when the appellant filed the bankruptcy notice and the creditor's petition and when the AO/RO were granted by the court on 20 December 2011. The six-year period had also not expired when the appellant filed its proof of debt on 19 January 2012. Significantly, it must be noted that the respondent did not raise the issue of limitation before the AO/RO were granted by the Bankruptcy Court;

(e) This case can clearly be distinguished from the case of *Tan Seok Leng (as the administratrix of the estate of Tan Kim Cheng, the deceased) v Magasu Sundram a/l T Magasu & Anor* [2013] 10 MLJ 86 cited by learned counsel for the respondent where the learned judge had held in the action for specific performance, that a delay of nearly nine years was too long and inequitable for the court to lend its assistance to such a proceeding; and

(f) Accordingly, we are of the view that the learned judge erred in law in holding that s 6 of the Limitation Act 1953 applied, and not s 26(2), in this case.

[23] Issue 4: The s 105(1) of the Bankruptcy Act point:

(a) the court may annul the AO/RO where it is proved to the satisfaction of the court that the debts of the bankrupt have been paid in full. Section 105(1) of the Act provides as follows:

> Where in the opinion of the court a debtor ought not to have been adjudged bankrupt, or where it is proved to the satisfaction of the court that the debts of the bankrupt are paid in full, or where it appears to the court that proceedings are pending in the Republic of Singapore for the distribution of the bankrupt's estate and effects among his creditors under the bankruptcy or insolvency laws of the Republic of Singapore and that the distribution ought to take place in that country, the court may annul the adjudication.

(b) in the present case what has been proved in evidence by the appellant is that the respondent had only settled the balance of the Islamic loan in the sum of RM141,606.98 but not the sum outstanding under the conventional loan. The respondent had failed to show that the conventional loan had been repaid in full to justify the annulment of the AO/RO; and

(c) as the requirement under s 105(1) of the Act has not been complied with by the respondent, we see no reason for the learned judge to allow the respondent's application to annul and rescind the AO/RO.

A CONCLUSION

[24] In the result, the appeal was allowed with no order as to costs. The deposit to be refunded to the appellant.

B *Appeal allowed.*

Reported by Afiq Mohamad Noor

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